

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NEW FOUNDATIONS CHARTER SCHOOL, INC.  
Employer

and

Case 04-RC-199928

PHILADELPHIA ALLIANCE OF CHARTER  
SCHOOL EMPLOYEES, LOCAL 6056, AFT-PA,  
AFT, AFL-CIO  
Petitioner

ORDER

The Employer's request for review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.<sup>1</sup>

MARK GASTON PEARCE,

MEMBER

LAUREN McFERRAN,

MEMBER

Dated, Washington, D.C., January 3, 2018

Member Emanuel, dissenting.

I would grant review and find that the Employer's K-8 school and high school are a single facility, and that therefore the petitioned-for high school unit is not an appropriate one and

---

<sup>1</sup> In denying review, we find no merit in the Employer's assertion that the Board should, pursuant to Sec. 14(c)(1) of the Act, decline to assert jurisdiction over the charter school, a private, nonprofit education corporation, because of its limited impact on interstate commerce, the legislative intent in the state statute to treat charter schools as public schools, and the state's authority to regulate the labor relations of its public employees. The Board has rejected similar arguments in *Pennsylvania Virtual Charter School*, 364 NLRB No. 87, slip op. at 9-10 (2016), and *Hyde Leadership Charter School-Brooklyn*, 364 NLRB No. 88, slip op. at 7-8 (2016).

We also agree with the Regional Director that the petitioned-for unit, based in the Employer's high school facility, is presumptively appropriate under the single-facility presumption and that the Employer failed to carry its burden of demonstrating that the operations of the high school facility had been effectively merged or functionally integrated with its K-8 facility so as to lose its separate identity. *J&L Plate*, 310 NLRB 429 (1993). In reaching this conclusion, we do not rely on the Regional Director's finding that the petitioned-for unit is appropriate under the test set out in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *enfd. sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), overruled by *PCC Structural, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017).

the election should be vacated. Currently, the K-8 school and the high school are essentially two buildings on one campus. Even if the K-8 school and high school were not to be regarded as a single facility, their very close proximity (75 feet apart), their interchange of the maintenance employees and the social worker, and the daily on-site presence of the Chief Executive Officer at both locations would serve to rebut the single-facility presumption.

WILLIAM J. EMANUEL,

MEMBER